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April 5, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 21, 2009

Case Number: TSO-0826

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on her behalf. During the ensuing investigation, the Local Security Office (LSO) learned that the individual had been arrested in October 2003 and had pled guilty in December 2003 to Obtaining a Controlled Substance by Fraud, a felony. Because this information raised security concerns, the LSO summoned the individual for interviews with a personnel security specialist in August and November 2008. After these Personnel Security Interviews (PSIs) failed to resolve the security concerns that were raised by the arrest, the LSO referred the individual to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, which set forth the results of that evaluation, and sent it to the

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

LSO. After reviewing this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. They informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 14 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced 13 exhibits, and presented the testimony of her mother, her hairdresser, and a former co-worker, in addition to testifying herself.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (l) defines as derogatory information indicating that the individual "has engaged in any unusual conduct or is subject to any circumstances which tend to show that [she] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [she] may be subject to pressure, coercion, exploitation or duress which may cause [her] to act contrary to the best interests of the national security. Such conduct include[s], but [is] not limited to, criminal behavior" 10 C.F.R. § 710.8(l). As support for this criterion, the Notification Letter cites the individual's October 2003 arrest, and alleged inconsistencies in statements about the arrest and the events leading up to it that she made to local police, during the DOE Psychiatrist's evaluation, in the Questionnaire for National Security Positions (QNSP) that she completed on January 30, 2008, and during the August and November 2008 PSIs. Further details about the arrest and the alleged inconsistencies will be set forth in section IV. of this Decision, *infra*.

This derogatory information adequately justifies the DOE's invocation of criterion (l), and raises significant security concerns. Conduct involving questionable conduct, lack of candor, or dishonesty can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Criminal behavior also calls into question an individual's judgement, reliability and trustworthiness. By its very nature, it raises doubts about a person's ability or willingness to comply with laws, rules and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines E and J.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual’s security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding her conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

A. Mitigating Information

In the Individual’s Exhibit (Ind. Ex.) 6 and at the hearing, the individual described the events leading up to her October 2003 arrest, and the arrest itself. She stated that, around the end of April or the beginning of May, 2003, she was enrolled in nursing school and was participating in a study group at a fellow student’s house. After one meeting of the group, she was leaving the house and going to her car when she was approached and threatened by a man whom she would come to refer to as “Mike.” The man, whom she did not know, did not display any weapon, but pushed her up against her car and told her that she “would help them or else he would find my family and friends and hurt them.” Ind. Ex. 6 at 1. The individual appeared to be cooperative so that “Mike” would let her leave. She got in her car, picked up her children, and went home. Hearing Transcript (Tr.) at 180.

Towards the end of May 2003, “Mike” and an unknown female referred to by the individual as “Rhonda” came to the individual’s house and knocked on her door.³ The individual apparently opened the door, and “Mike” “had a gun. He put it in my face. He threatened me, said that I was going to help him or the next time I saw my kids they would be cut up into little pieces and boxed on my front porch. And so I went with him.” *Id.* She got into her assailants’ vehicle, sitting in the front seat between the two of them, and was driven to a small pharmacy. They gave her cash and told

³ “Mike” and “Rhonda” were apparently how the couple referred to themselves. Tr. at 176.

her to go into the store and ask for a prescription filled for a person whose name she no longer recalls. "Mike" and "Rhonda" followed her into the pharmacy, staying close by, and the individual picked up the prescription. The three then returned to the car, "Mike" and "Rhonda" took possession of the medication, and then drove the individual home. Ind. Ex. 6 at 1.

Toward the end of June 2003, "Mike" and "Rhonda" again forced the individual to illegally obtain prescription drugs for them. The individual testified that this encounter was similar to the May 2003 incident. "Different name, different pharmacy," she explained, "but pretty much the same." Tr. at 182. They again kidnaped her at gunpoint, placed her in the middle of the front seat of their vehicle, drove her to a small "mom-and-pop" pharmacy in a nearby town, gave her money to pay for a prescription and the name under which the prescription was placed, followed her into the store and stayed "close by" while the individual obtained the drug. Ind. Ex. 6 at 1.

Shortly after this incident, during the first week in July 2003, the individual decided to tell her husband about these events and to report them to the local police. She said that she didn't go to the police initially because she felt, after each of the first two encounters, that they might not bother her again. Tr. at 183. However, after "Mike" and "Rhonda" kidnaped her for the second time, she realized that they weren't going to leave her alone. *Id.* She also confided in her mother at about the same time.

Several days after the individual filed the police report, she was loading her car outside of her parents' house after visiting them with her children. She was bending over, putting things into the driver's side of her vehicle, which was on the side facing the street. She "was going to raise up out of the car to go back in the house, and this blue truck comes barreling down and barely misses my door." Tr. at 186. "Mike" was in the truck. November 12, 2008, PSI at 42. The individual had to press herself against her car to avoid being struck. Tr. at 186-187. She ran inside her parents' house and called the police.

Sometime after that, the individual's husband found a threatening note on the windshield of the individual's car, that had been parked in her driveway. The note stated that the individual would help "Mike" and "Rhonda," "or else." Ind. Ex. 6 at 2. The police were called, and they responded, took the note, and made a report. *Id.*

The individual's next encounter with "Mike" and "Rhonda" took place on October 14, 2003, and culminated in her arrest. She testified that she and her family "had started kind of relaxing" because she had not heard from "Mike" and "Rhonda" since the note had been left on the windshield of the individual's car a couple of months earlier. Tr. at 194. The individual was alone at her residence that day, her husband and children having gone to work and to school, respectively. She had showered and dressed, in preparation for running errands with her mother, but had not yet dried her hair. The front door was unlocked, because she was expecting her mother "in 15, 20 minutes maybe" and, although she had a key, the individual wanted to make her mother's entry "easier," so that she wouldn't "have to pull out her key." Tr. at 195. The individual heard someone entering through the front door. She initially believed that it was her mother, but as she approached the door, she realized that it was "Mike" and "Rhonda." After "Mike" said that she was going to help them, the individual "tried to back up a little bit," and "Mike" pushed her down to the floor. "Mike" didn't put a gun in

her face on that occasion, “but he made it obvious that he had it on his hip.” Tr. at 196. He told her to get her car keys, that she was going to help them, and that, if she didn’t, they were going to hurt her family. *Id.* The individual did not see the blue car that the couple had previously used, and she does not know how they got to her house. All three of them got into the individual’s car, and the individual drove them to a local pharmacy. Tr. at 197-198. “Mike” and “Rhonda” gave the individual money to pay for the prescription and told her to represent to pharmacy personnel that she was picking up the prescription for her sister “Patricia.” The individual does not know a “Patricia.” The couple followed the individual into the pharmacy. The individual approached the counter and attempted to pick up the prescription.⁴ When the police arrived, the individual tried to inform the officer about what was going on, and was told to “shut up,” and that “anything I said could be used against me.” Ind. Ex. 6 at 2. The individual stopped talking and was taken outside, where she tried to inform another officer that she had been threatened by “Mike” and “Rhonda” on numerous occasions, that they were “there at the scene,” and that the police should look in the vicinity for the blue car that they had previously driven. According to the individual, the police did not do so. *Id.*

The individual’s final encounter with “Mike” or “Rhonda” occurred approximately one week after her arrest. She was on her way to pick up her mother for an appointment with her attorney (who is also representing her in this proceeding), when she was nearly run off the road by a gold truck. She was able to write down the license number of the truck on a pack of cigarettes. A photocopy of what appears to be a portion of a pack of cigarettes, with a description of the truck and a license number, was submitted as a part of Ind. Ex. 1, and Ind. Ex. 4. She reported this information to the police.

The individual also stated that she was not required to sign anything at any of the pharmacies, was not asked to identify herself, and was not aware at the time of the nature of the medications she was picking up. Tr. at 252-253. She remarked that, had she been asked for her signature, she could have written a note to a store employee, asking for help, without alerting “Mike” and “Rhonda,” who were always standing nearby. Tr. at 252.

The individual also testified about her health problems. She said that she was involved in an automobile accident in July 1999, during which she injured her back. She received chiropractic care for approximately two years, and then was referred to another doctor by her family physician. She has had several medical procedures on her back over the years, and had been taking prescription painkillers, including hydrocodone and Imitrex, for her back and neck and also for migraine headaches. Tr. at 164-165, 240-242. She further stated that she had a procedure performed on her back in September 2003, and that, since her recovery from that procedure, she has not had any further trouble with her back. Tr. at 166-167.

Finally, the individual discussed her reasons for pleading guilty to fraudulently obtaining the prescription drugs. She stated that, had she not accepted the state’s plea offer, she faced possible prosecution relating to all three of the instances during which she allegedly obtained drugs for

⁴ According to the police report, pharmacy personnel had become suspicious about the validity of the prescription when it was placed by telephone. Consequently, when the individual arrived to pick the medication up, they called the police. DOE Ex. 11.

“Mike” and “Rhonda,” and not just the October 2003 incident. She testified about significant financial problems she and her husband had experienced, and that she did not believe that she could withstand the financial and emotional burdens associated with three separate trials. Tr. at 167-168, 215, 217. Moreover, the individual had doubts as to whether she could convince a jury that she had acted under duress and, rather than risk a more severe punishment, she decided to accept the state’s offer of four year’s probation, a fine, and community service. Tr. at 218-220.

The individual’s mother also testified. She stated that the individual told her about her encounters with “Mike” and “Rhonda” toward the end of June 2003, and wanted her to accompany the individual to the police station to file a report. She said that the individual told her about Mike’s threats to kill the individual’s husband, and to take their children away, and “return them to [the individual] in a box in pieces.” Tr. at 69. They also told the individual that they knew where her parents lived. *Id.*

The individual’s mother also testified about a visit that she and her daughter made to her daughter’s doctor on July 9, 2003. During that visit, the doctor “scolded [the individual] severely” for not taking her pain medications as prescribed. Tr. at 75. According to her mother, the individual was holding off on taking the medications until she absolutely had to, and was taking less than the prescribed amount when she did take them. The individual’s mother attributed this behavior to the concerns of the individual’s husband, whom the mother indicated had a fear of drugs because of the problems that other members of the husband’s family had allegedly had with substance abuse. Tr. at 75-77.

The individual’s mother then discussed the occurrences on October 14, 2003. She stated that she was going over to the individual’s house to pick her up. When she got there, her daughter’s car was not in the driveway, which she considered odd because her daughter was not supposed to be driving because of her back and, according to the mother, the individual was “very, very religious about trying to . . . follow the doctor’s orders, because she wanted the pain to be gone.” Tr. at 81. She also found the front door unlocked, which was also “very, very unusual,” and the individual’s back brace was on the floor. *Id.* The individual was not at home, and did not have a cell phone, so her mother could not contact her. The individual’s mother then wrote a note, which says “I missed you. Are you suppose to drive? Have gone home. Mom,” and attached it to the door. Ind. Ex. 3, Tr. at 83. After the individual’s mother returned to her truck, she received a phone call from the individual’s husband, informing her of the arrest. Tr. at 84. The individual’s mother drove to the pharmacy where her daughter had been arrested, and then drove to the jail to which she had been transported. When she saw her daughter, she noticed that her hair was still wet. According to the mother, the individual would never leave the house with her hair in that condition. Tr. at 85.

After the individual’s final encounter with “Mike” and “Rhonda,” and frustrated by the police’s failure to apprehend the couple, the individual’s mother decided to pursue an independent investigation. She took the alleged license plate number and description that her daughter had written down to the state Department of Motor Vehicles (DMV), and got the name and address of the owner of the gold truck. The individual and her mother then drove to the address, and waited about a quarter of a mile from the house in the mother’s truck. Eventually, the individual’s mother noticed “a dark Camaro-type vehicle approaching from behind” them. Tr. at 95. The car pulled up beside them, and the driver leaned over and looked out of the passenger-side window at the individual and

her mother. The individual recognized the driver as being “Mike,” and then “hit the floorboards” of her mother’s truck in fear. Tr. at 96. The individual’s mother pulled off, and “Mike” started following them. Eventually, “Mike” turned off, and the individual’s mother, not wanting to let him get away, doubled back and began looking for him. They found him outside of a local convenience store, using a public telephone. They parked nearby, but “Mike” saw them, and the individual’s mother decided that it would be too dangerous for them to remain where they were. They pulled away and were leaving when “Mike” “pulled his car right - - I mean, I thought he was going to hit us. And he just - - he just did this number, grinning.” Tr. at 98. The individual’s mother left the scene, and “Mike” did not follow. *Id.*

The individual’s mother drove to the individual’s mother-in-law’s house, picked up the individual’s mother-in-law, drove to her house, got her camera, and then drove back to the address that she had obtained from the DMV. When she returned, the individual’s mother saw “Mike” standing in a driveway with a garden hose. She pulled up to take pictures of “Mike,” and he started spraying water on her. Tr. at 99. Because she was unable to get any pictures, she decided to leave. As she drove off, another truck started chasing her. The individual’s mother pulled into a nearby fire station. The driver of the truck was not the person whom the individual and her mother referred to as “Mike.” He pulled his truck up to their vehicle, and asked “Why are you bothering my friend? Why are you harassing my friend?” The individual’s mother replied, “That man is harassing my daughter. He’s kidnaping her out of the house. He’s threatening to kill my grand babies. His name is Mike. . . .He’s trying to hurt my grand babies.” The driver of the truck allegedly replied that his name wasn’t “Mike,” but XXXXXXXXXX. Tr. at 99-100. The individual’s mother testified that she provided this information to the police, but that she was not taken seriously. Tr. at 100.

The individual’s mother later obtained information about XXXXXXXXXX’s criminal record, and a “mug shot” of Mr. XXXXXXX. This information was submitted as Ind. Ex. 5, and sets forth a lengthy history of felony and misdemeanor offenses, including automobile theft, possession of a controlled substance, unlawfully carrying a weapon, assault causing bodily injury, forgery, and violation of a protective order. At the hearing, both the individual and her mother identified the picture of XXXXXXX as being “Mike,” the person who allegedly kidnaped the individual. Tr. at 101, 213-214. The individual’s attorney, who knew of XXXXXXX because he represented a former girlfriend of XXXXXXX whom he allegedly assaulted, showed the individual a picture of his client. The individual’s mother testified that the individual was unable to identify the picture as being “Rhonda,” and “Rhonda” was never, in fact, identified. Tr. at 102-103.

B. Analysis

After reviewing the record as a whole, including all of the testimony offered at the hearing and the exhibits submitted by the parties, I did not find the individual’s story about the events leading up to, and surrounding, her arrest to be credible. The reasons for this conclusion are set forth below.

As an initial matter, if the individual’s story is to be believed, she and her loved ones were threatened with bodily harm by “Mike” outside of the individual’s study group, and she was kidnaped at gunpoint approximately one month later by a couple who threatened to dismember her children, yet the individual told no one, not even her husband or the police, until approximately one month after

the kidnaping, after she was allegedly kidnaped a second time. The individual testified that she did not confide immediately in her husband because of the state that their marriage was in at the time and because she felt that she was protecting him and the rest of her family by remaining silent. Tr. at 246. However, it is difficult to conceive of how not informing her husband about the existence of allegedly armed felons who had threatened him and their children and who allegedly knew where they lived could possibly be thought of as protecting anyone. By not informing her husband of the alleged threat, the individual made it impossible for him to exercise heightened vigilance or take other measures to ensure his safety and the safety of his family.

Furthermore, the individual indicated during her testimony that she did not know either “Mike” or “Rhonda.” Tr. at 178-179, 214. Yet, if the individual is telling the truth, they knew a lot about her; where she lived, that she had children (there is no indication in the record that they were ever around during the alleged encounters), where her parents lived, who her friends were, November 12, 2008 PSI at 12, and that she had reported them to the police in early July 2003, Tr. at 246-247. Nowhere in the record is an indication of how they obtained this information.

Also significant are the glaring inconsistencies in the information provided by the individual. Although some of them can be attributed to security personnel erroneously combining events and making other errors in interpretation, as argued by the individual, Tr. at 10, 191, 201-208, other inconsistencies were not adequately explained. During the August 2003 PSI, the individual stated, while discussing the events of October 14, 2003 leading up to her arrest, that she had just gotten out of the shower when she heard a knock on her door. She “got dressed real quick and answered the door and it was [“Mike” and “Rhonda”].” DOE Ex. 14 at 10. At the hearing, though, she testified that she did not hear a knock on the door. Tr. at 261. Rather, she heard someone come in, and when she “walked around the . . . corner, and there [were] Mike and Rhonda.” Tr. at 195-196. When asked to explain this discrepancy, the individual said that “maybe my mom did a light knock as she walked in.” Tr. at 262. However, she later testified that she and her mother were never in the individual’s house together on the day of her arrest. Tr. at 263-264.

In addition, the individual stated during her November 2008 PSI and during her psychiatric evaluation that during her first encounter with “Mike” outside of the study group, she did not observe him to be armed. DOE Ex. 9 at 14; DOE Ex. 13 at 18. In fact, at the hearing, the individual testified that she has never indicated to anybody, intentionally or otherwise, that “Mike” had a gun during their encounter outside of the study group. Yet, during the August 2008 PSI, the individual was asked whether the first time that she was threatened was by gunpoint. She replied in the affirmative, and stated that it took place “right outside the home that we were studying at.” DOE Ex. 14 at 16-17.

Finally, at the hearing and during the November 2008 PSI, the individual stated that just prior to her October 2003 arrest, “Mike” and “Rhonda” kidnaped the individual and forced her to drive all three of them in her car to the local pharmacy. Ind. Ex 13 at 93; Tr at 199. However, according to the police report of the October arrest, the individual told a police officer that one of the couple rode with her in her car, and the other followed in a blue car. DOE Ex. 11. Moreover, in her psychiatric evaluation, the DOE psychiatrist quoted the individual as having said, “We went to [a local pharmacy]. It was about five minutes from my house I was going to get a prescription for a Patricia **They followed.**” DOE Ex. 9 (emphasis in original). At the hearing, the individual

explained that when she stated that the couple followed her, she meant that they followed her from her vehicle into the pharmacy, not that they followed her from her home in a second car. Tr. at 197-200. However, at the hearing, the DOE psychiatrist responded to this explanation by testifying that in her report, she “bolded” the facts that the individual provided to her that were different than what she had previously stated. She continued that the individual indicated during her interview that she was followed to the pharmacy by a separate vehicle. Tr. at 335.

In addition, the individual’s account of the circumstances of her arrest, particularly regarding the presence of “Mike” and “Rhonda” and her reaction to the arresting officers, is inconsistent with the police report containing the contemporaneous observations of the police and statements by pharmacy personnel. At the hearing, the individual testified that she was happy to see the police. Tr. at 212. Yet, according to the police report, the individual looked startled when she saw the officer, and attempted to evade him. DOE Ex. 11. Moreover, the individual testified that “Mike” and “Rhonda” followed her into the pharmacy on the day of the arrest, and that on each occasion that she picked up a prescription for the couple, they stood six-to-ten feet away from her. Tr. at 198, 271. However, pharmacy personnel reported seeing no one with the individual. DOE Ex. 11. The individual disputed the accuracy of much of the police report at the hearing, and her attorney argued strenuously that police reports in general are often rife with errors. Yet, I found it interesting that during her interview with the DOE psychiatrist, the individual admitted that the police report was more likely to be accurate than her own memory of the arrest, because it was created at, or close to, the time of the incident. DOE Ex. 9 at 15.

Moreover, it appears that the individual did not mention “Mike” and “Rhonda” until some time after she was taken outside and placed in the police car. If, in fact, the individual was being kidnaped and coerced, it seems likely that the individual would have expressed this to the officer while still in the pharmacy, to permit the greatest opportunity for the officer to apprehend her alleged abductors. The individual did testify that, while still in the pharmacy, she was trying to tell the officer what happened, and was told to “Shut up,” but if the people who had terrorized her for months were, in fact, getting away, and with them, her chances for avoiding a felony conviction, I believe that she would have immediately communicated this information to the officer anyway.

I also find it highly significant that the individual’s husband and mental health professionals who either evaluated her or counseled her did not find the individual to be credible. According to the police report generated by the individual’s arrest, the arresting officer called the individual’s husband and informed him that his wife had been arrested for fraudulently obtaining prescription medication. The husband stated that his wife had made up a story several months prior to the arrest “about being threatened and being made to get drugs, but he had not seen any evidence or had the family seen any evidence of the story.” DOE Ex. 11. The husband added that he suspected that his wife had an addiction to hydrocodone, and the officer confirmed that that was what she was arrested for attempting to fraudulently acquire. ⁵ *Id.*

⁵ Much of the testimony presented by the individual at the hearing was dedicated to explaining why the husband believed the individual was addicted to hydrocodone, and to refuting that belief. However, in evaluating this evidence, I note that the Notification Letter did not list the abuse of
(continued...)

Understandably, much of the testimony at the hearing was directed toward explaining or rebutting these comments, and toward explaining why the individual's husband did not testify. First of all, the husband's statement that neither he nor the individual's family had seen any evidence supporting the individual's story cannot be reconciled with the individual's testimony that the husband discovered a threatening note from "Mike" and "Rhonda" on her car windshield during the summer of 2003, and suggests either that the husband did not find or see the note, or did not believe it to be authentic. The individual had no explanation for this discrepancy. The individual did testify that, sometime after her arrest, he "came up to me after the fact and said that he had found out stuff after everything happened. I don't know what it was, he's never told me. But he found out other things and that he did believe what was going on." Tr. at 244. However, certain factors cause me to doubt the accuracy of the individual's representation that her husband now believes that she was repeatedly abducted and made to fraudulently obtain prescription medications. First, if the husband truly believed his wife's story, it seems likely that he would have testified during the hearing, given the possible consequences of an adverse determination regarding his wife's clearance. The individual testified that the husband's perceived failure to support her during this sequence of events is a point of contention between them, and that having him testify was not worth the risk of jeopardizing their marriage. Tr. at 173-174. In fact, she stated that discussing the possibility of testifying with him almost provoked a fight. Tr. at 322. Yet, it is difficult to imagine how his testimony would have provoked conflict, unless it was markedly inconsistent with that offered by the individual and her mother. Moreover, both the individual and her mother testified that the husband has difficulty admitting mistakes or admitting that he was wrong. Tr. at 79, 172. This suggests that the husband's current beliefs might not differ so greatly from his beliefs during the period in question as the individual suggests.

⁵(...continued)

prescription drugs, or of any drugs, as a security concern. In her evaluation, the DOE psychiatrist stated that whether or not the individual suffered from a substance use disorder was "Undetermined." DOE Ex. 9 at 18. At the hearing, she explained that that meant that she did "not have enough information to rule out or rule in a diagnosis." Tr. at 325. To the extent that prescription drug abuse is relevant as one of several possible explanations for the individual's behavior, I further note the conclusion of the DOE psychiatrist that the evidence presented by the individual, which included multiple negative drug and alcohol assessments and tests, does not preclude the possibility of prescription drug abuse or dependency by the individual during the period in question. Tr. at 329-330, 353. With regard to the drug and alcohol evaluations, the DOE psychiatrist testified that she could not concur with their conclusion that the individual did not have a substance use disorder without knowing what the evaluations consisted of. Tr. at 353-355. Concerning the drug tests, the DOE psychiatrist stated that the type of tests that the individual was subjected to prior to January 2004 would not have detected drugs used more than 72 hours prior to the test. Tr. at 357. The hair follicle test that was administered in January 2004 ruled out any drug usage during the preceding 90 days, or after the individual's arrest, but does not rule out drug usage before that time. Tr. at 356. Based on the foregoing, I conclude that the individual's "clean" drug evaluations and test results do not preclude prescription drug abuse or dependence as a possible explanation for the individual's actions.

The DOE psychiatrist and the individual's own counselor have also expressed doubts about the individual's credibility. In her report, the DOE psychiatrist stated that although the individual had significant medical problems, the DOE psychiatrist could not get a clear history of her treatments, and that without a credible history from the individual or from other sources, the possibility of the individual having a substance use disorder could not be fully explored. DOE Ex. 9 at 17-18. She concluded that the individual's story was "difficult to comprehend," and that "her continued attempt to rationalize the inconsistencies" in her accounts of the incidents was "bothersome." *Id.* at 19. After witnessing all of the testimony and reviewing the exhibits at the hearing, the DOE psychiatrist concluded that there were still unexplained inconsistencies in the accounts of the relevant incidents provided by the individual. Tr. at 330.

In December 2003, the individual began seeing a counselor to help her cope with her fears and concerns about her then-pending divorce from her husband.⁶ Based on the counselor's notes, it appears that she had nine sessions with the individual over a period of approximately two-and-a-half months, with the sessions lasting approximately 40 minutes to an hour each. DOE Ex. 9. In her notes from the eighth session, the counselor wrote "[the individual] is defended against looking at herself. . . . My sense of her is that she doesn't always tell the truth." *Id.* In her April 1, 2004 closing summary, the counselor wrote that the individual was "defended. Kept me out. Story not always presented in a way I could understand or wasn't consistent." *Id.* She further stated that in her last sessions with the individual, the counselor was more "confrontive about the incongruencies" in her story, and the individual stopped seeing her. *Id.*

At the hearing, the individual argued that even if she was not coerced into fraudulently obtaining the medication, she should be granted a clearance because the arrest was an isolated incident that is unlikely to be repeated. I disagree. While it does appear that she has had no other significant legal difficulties, her continuing insistence that she was coerced into fraudulently obtaining the prescription medication raises significant doubts about her honesty and reliability. The individual has failed to successfully address the DOE's security concerns under criterion (I).

V. CONCLUSION

After carefully considering all of the evidence in the record as outlined above, I conclude that the individual has not demonstrated that granting her access authorization would not endanger the common defense and security, and would be clearly consistent with the national interest. Accordingly, I find that the individual should not be granted a security clearance. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

⁶ The individual filed for divorce during the last part of October or the first part of November 2003. Tr. at 223. The couple reconciled after the individual accepted a plea bargain in her criminal case. It was at this time that the individual's husband allegedly told the individual that he now believed her story about "Mike" and "Rhonda." Tr. at 221.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: **April 5, 2010**